

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

MICHAEL MCEVILY, #339637,

Petitioner,

v.

2:06CV405

GENE M. JOHNSON, Director of the
Virginia Department of Corrections,

Respondent.

FINAL ORDER

This matter was initiated by petition for a writ of habeas corpus under 28 U.S.C. § 2254. The petition alleges violation of federal rights pertaining to the revocation of a previously suspended sentence related to petitioner's convictions of February 4, 2000, in the Circuit Court of Prince William County, Virginia. Petitioner does not, in this proceeding, attack the underlying conviction.

The matter was referred to a United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C), and Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia for report and recommendation. The Magistrate Judge filed his report recommending dismissal of the petition on June 4, 2007. By copy of the report, each party was advised of his right to file written objections to the findings and recommendations made by the Magistrate Judge. The Court received from petitioner on June 18, 2007, objections to the report.

The Court, having reviewed the record and examined the objections filed by the petitioner and having made de novo findings with respect to the portions objected to, does hereby adopt and approve the

findings and recommendations set forth in the Report of the United States Magistrate Judge filed June 4, 2007. It is, therefore, ORDERED that the petition be DENIED and DISMISSED on the merits and that judgment be entered in respondent's favor.

To the extent that petitioner objects to the Magistrate Judge's findings, the objection is without merit. Petitioner boldly asserts that "Courts notoriously **pre-determine** the outcome of a habeas corpus petition and skillfully manipulate the facts . . . " (Obj. to Mag's Report and Recommendation at 1, emphasis in original.) Petitioner then proceeds to do exactly the same thing in dealing with his own factual situation.

Petitioner objects to the Magistrate Judge's acceptance of the Supreme Court of Virginia's conclusion that the Circuit Court's sentencing order intended for petitioner's period of probation to begin "subject to the conditions of probation upon his release from incarceration." (Star v. Director, Va. S.Ct. Rec. #052043 ord. at 2.) When petitioner was sentenced in the Circuit Court of Prince William County in 2000, he was given three years to serve, with two years suspended, and he was "placed on probation to commence today [February 4, 2000] or upon release from incarceration, . . . for a period of **three (3) years**." (Sent. Ord. at 2, emphasis in original.) Given the fact that petitioner's one year sentence was to be served consecutively and the fact that petitioner had other time to complete before his probation period began, the Circuit Court was precise and appropriate in the sentencing order. Petitioner's probation could not begin until he had completed all of his other sentences. When the probation period did begin in June, 2003, petitioner had three years of supervision remaining.

Since petitioner was arrested within that three-year period for new criminal conduct, his suspended sentence was revoked and he was returned to prison. The Supreme Court of Virginia simply reinforced the actions of the Circuit Court. There is no federal or constitutional issue present in this case.

Petitioner may appeal from the judgment entered pursuant to this Final Order by filing a written notice of appeal with the Clerk of this Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within thirty days from the date of entry of such judgment. Petitioner has failed to demonstrate "a substantial showing of the denial of a constitutional right." Therefore, the Court, pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure, declines to issue a certificate of appealability. See Miller-El v. Cockrell, 123 S.Ct. 1029, 1039 (2003).

The Clerk shall mail a copy of this Final Order to petitioner and to counsel of record for the respondent.

_____/s/_____
Rebecca Beach Smith
United States District Judge

Norfolk, Virginia

_____July 30_____, 2007